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 Nathan Gantcher, David V. Harkins,
 Scott L. Jaeckel, Thomas H. Lee,
 Ronald L. O'Kelley, and Scott A. Schoen

**UNITED STATES BANKRUPTCY COURT
 SOUTHERN DISTRICT OF NEW YORK**

-----X	:	
In re	:	
	:	Chapter 11
REFCO, INC., et al.,	:	
	:	Case No. 05-60006 (RDD)
	:	
Debtors.	:	(Jointly Administered)
-----X	:	
	:	
AXIS REINSURANCE COMPANY,	:	
	:	
Plaintiff,	:	
	:	
v.	:	Adv. Proc. No. 07-01712 (RDD)
	:	
	:	
PHILLIP R. BENNETT, et al.,	:	
	:	[caption continued on next page]
Defendants.	:	
-----X	:	

**APPELLEES' COUNTER-STATEMENT OF ISSUES
 AND COUNTER-DESIGNATION OF RECORD WITH
 RESPECT TO AXIS'S DESIGNATION OF ITEMS IN RECORD ON
 APPEAL AND STATEMENT OF ISSUES PRESENTED (Docket No. 132)**

-----X	:	
TONE N. GRANT, et al.,	:	
	:	
Plaintiffs,	:	
	:	
v.	:	Adv. Proc. No. 07-2005 (RDD)
	:	
AXIS REINSURANCE COMPANY,	:	
	:	
Defendant.	:	
-----X	:	
LEO R. BREITMAN, et al.,	:	
	:	
Plaintiffs,	:	
	:	
v.	:	Adv. Proc. No. 07-2032 (RDD)
	:	
AXIS REINSURANCE COMPANY,	:	
	:	
Defendant.	:	
-----X	:	

Pursuant to Rule 8006 of the Federal Rules of Bankruptcy Procedure, Plaintiff-Appellees Leo R. Breitman, Nathan Gantcher, David V. Harkins, Scott L. Jaeckel, Thomas H. Lee, Ronald L. O’Kelley, and Scott A. Schoen (collectively, the “Director Insureds”) hereby submit the following counter-designation of additional items to be included in the record on appeal and counter-statement of the issue on appeal in connection with the appeal of Axis Reinsurance Company (“Axis”) from the Order Granting Motions for Summary Judgment, entered on October 19, 2007, by the United States Bankruptcy Court for the Southern District of New York (Drain, J.) (Docket Nos. 125 & 127), and respectfully submit as follows:

COUNTER-DESIGNATION OF RECORD

The Director Insureds hereby counter-designate the following items, annexed hereto as exhibits numbered 1 through 4, to be included in the record on appeal:

<u>Exhibit No.</u>	<u>Docket No.</u> ¹	<u>Description</u>
1	1, Ex. C	Lexington Insurance Company Directors and Officers Insurance and Company Reimbursement Policy, Excess Liability Policy No. 1620924.
2	11	Director Defendants' Motion to Dismiss Complaint of Axis Reinsurance Company dated July 12, 2007.
3	127	Errata Order signed on October 22, 2007.
4	N/A	Transcript of Hearing Held on September 5, 2007, <i>Axis Reinsurance Co. v. Klenja</i> , M-47 (JGK) (S.D.N.Y. Sept. 5, 2007).

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¹ Documents referenced herein include all exhibits filed in connection therewith.

COUNTER-STATEMENT OF ISSUE ON APPEAL

The Director Insureds hereby submit the following counter-statement of the issue on appeal:

In granting the Director Insureds' motion for summary judgment and similar requests for relief of other insureds, did the Bankruptcy Court err in concluding that Axis is compelled to advance defense costs to the Director Insureds and other insureds pending a final judicial determination that such defense costs are covered under the policy?

Dated: November 2, 2007
New York, New York

/s/ Michael F. Walsh
Greg A. Danilow, Esq. (GD 1621)
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